

July 5, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: Miranda Grace Edwards v. Duquesne Light Company
Docket No. C-2018-3002741

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Complaint filed by Miranda Grace Edwards. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

cc: Miranda Grace Edwards (w/ enclosure)

LIT:642747-1 014657-158498

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MIRANDA GRACE EDWARDS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3002741

**PRELIMINARY OBJECTIONS TO
COMPLAINT**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
Paul Shane Miller, Esquire
PA I.D. No. 319174
smiller@tuckerlaw.com
Jeremy V. Farrell, Esquire
PA I.D. No. 316258
jfarrell@tuckerlaw.com
(412) 566-1212
1500 One PPG Place
Pittsburgh, PA 15222

NOTICE TO PLEAD

TO: COMPLAINANT MIRANDA GRACE EDWARDS

**YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO THESE PRELIMINARY
OBJECTIONS WITHIN TEN DAYS OF SERVICE OR A JUDGMENT MAY BE ENTERED
AGAINST YOU.**

TUCKER ARENSBERG, P.C.



Paul Shane Miller, Esquire
Jeremy V. Farrell, Esquire
Counsel for Duquesne Light Company

4. In addition, Duquesne Light seeks dismissal of Complainant's claim that the installation of a smart meter violates the Fourth Amendment to the United States Constitution because the Commission lacks jurisdiction to adjudicate this claim.

II. Relevant Factual Background

5. Complainant is a Duquesne Light customer at the property located at 35 Acorn Street, Pittsburgh, Pennsylvania 15207 (the "Property"). Complaint at ¶ 1.

6. Duquesne Light plans to install a smart meter at the Property. Complaint at ¶ 4.

7. Complainant has refused Duquesne Light's attempt to install a smart meter and asks that the Commission permit her to opt out of receiving a smart meter. Complaint at ¶¶ 4-5.

8. Duquesne Light has not installed a smart meter at the Property yet. Complaint at ¶ 5.

III. Argument

A. To the extent that Complainant seeks to "opt out" of receiving a smart meter, that portion of her claim must be dismissed because it is legally insufficient.

9. Preliminary objections may be filed for "legal insufficiency of a pleading." 52 Pa. Code § 5.101(a)(4). "In order to be legally sufficient, a complaint must set forth an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." Drake v. Pa. Elec. Co., Docket No. C-2014-2413771, 2014 WL 2003281, at *1 (Pa. P.U.C. May 7, 2014) (Salapa, ALJ).

10. Section 703(b) of the Public Utility Code ("Code") allows the Commission to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessarily in the public interest. 66 Pa. C.S. § 703(b); See also Campisi v. PECO Energy Co., Docket No. 2014-2434501, 2014 WL 4644282, at *1 (Pa. P.U.C. Sept. 3, 2014) (Salapa, ALJ) ("The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists.").

11. Act 129 of 2008 ("Act 129") requires electric distribution companies with more than 100,000 customers, including Duquesne Light, to deploy smart meters throughout their service territories. 66 Pa. C.S. § 2807.

12. Act 129 also requires electric distribution companies with more than 100,000 customers, including Duquesne Light, to file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa. C.S. § 2807(f)(1).

13. Duquesne Light filed a smart meter technology procurement and installation plan, which the Commission approved on May 6, 2013. See Docket No. M-2009-2123948.

14. The Commission approved, in relevant part, Duquesne Light's amended smart meter technology procurement and installation plan ("Smart Meter Plan") on April 7, 2017. See Docket No. P-2015-2497267, Opinion and Order at 9, 51.

15. The Smart Meter Plan requires Duquesne Light to finish installing residential smart meters, including at the Property, by the end of 2018.

16. By attempting to install a smart meter at the Property in accordance with the Smart Meter Plan, Duquesne Light is, therefore, complying with the law.

17. Duquesne Light's installation of smart meters is consistent with, and not a violation of, the Code and Commission regulations and orders.

18. Act 129 does not permit a customer to "opt out" of receiving a smart meter. To the extent that Complainant is requesting Duquesne Light to provide her with an opt out of its smart meter program, Complainant asks Duquesne Light to break the law.

19. The Commission has ruled that "[t]he use of the word '*shall*' in the statutes indicates the General Assembly's direction that all customers will receive a smart meter." Evans v. PECO Energy Co., Docket No. C-2013-2368477, 2013 WL 7019103, at *3 (Pa. P.U.C. Dec. 19, 2013) (Hoyer, ALJ) (emphasis added).

20. Likewise, the Commission Implementation Order relating to the installation of smart meters provides: “The Commission believes that it was the intent of the General Assembly ***to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment ‘in accordance with a depreciation schedule not to exceed 15 years.’***” Id. (quoting Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009)) (emphasis added).

21. Simply put, “there is no provision in the statute that allows customers to ‘opt out’ of smart meter installation, as Complainants desire.” Evans, 2013 WL 7019103 at *3; see also, Francis v. PECO Energy Co., Docket No. C-2014-2451351, 2015 WL 5011620, at *7 (Pa. P.U.C. August 20, 2015) (noting that “there is no provision in the Code, the Commission’s Regulations, or Commission Orders that permits a customer to opt out of having a smart meter installed on his or her premises.”).

22. Complainant seeks to “opt out” of receiving a smart meter, Complaint at ¶ 5, but her request is legally insufficient and should be dismissed. See Campisi, supra (granting preliminary objections for legal insufficiency where the complainant sought to opt out of PECO’s smart meter program) (citing additional cases); Jackson v. PECO, Docket No. C-2017-2600495 (June 26, 2017) (Salapa, ALJ) (sustaining preliminary objections and dismissing a formal complaint that opposed the installation of a smart meter).

23. Finally, it bears noting that the Commonwealth Court’s decision in Romeo v. Pa. Public Util. Comm’n, 154 A.3d 422 (Pa. Commw. Ct. 2017) does not undermine Duquesne Light’s Preliminary Objection, which seeks dismissal of the portion of the Formal Complaint in which Complainant requests to opt out of Duquesne Light’s smart meter program. Romeo did not create an opt-out provision in Act 129. Installation of smart meters is still mandatory as a condition of receiving electric service from Duquesne Light, so the portion of the Formal Complaint requesting an opt-out is legally insufficient.

B. Complainant's claim that Duquesne Light has violated the Fourth Amendment to the United States Constitution must be dismissed because the Commission lacks jurisdiction to resolve this claim.

24. A party may file preliminary objections on the grounds that the Commission lacks jurisdiction. 52 Pa. Code §5.101(a).

25. The Commission is a creature of statute and may exercise only those powers that are expressly conferred upon it by the legislature. Feingold v. Bell of Pennsylvania, 383 A.2d 791, 794 (Pa. 1978).

26. The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348, 348 (Pa. Super. 1945).

27. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390, 393 (Pa. Cmwlth. 1992).

28. Section 701 of the Code, 66 Pa. C.S. § 701, authorizes the Commission to hear complaints regarding the Code, Commission Regulations, or a Commission order. Haleema B. Alkhatib v. PECO Energy Co., C-2011-2242125, 2012 WL 641672, at *5 (Pa. P.U.C. Jan. 12, 2012).

29. The Commission does not have jurisdiction over claims arising under the United States Constitution. See Alice Ann Belmonte-Gates v. PECO Energy Co., F-2012-2332583, 2013 WL 596066, at *7 (Jan. 24, 2013) (Commission does not have jurisdiction over matters involving federal civil rights) (Cheskis, ALJ); James Coppedge v. PECO Energy Co., F-2009-2135893, 2010 WL 3183815, at *5-6 (July 29, 2010) (Commission does not have jurisdiction over issues arising under the United States Constitution).

30. Here, Complainant claims that Duquesne Light has violated her rights under the Fourth Amendment to the United States Constitution by attempting to install a smart meter at the Property. Complaint at ¶ 4.

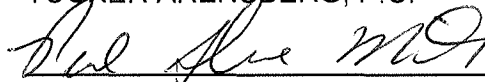
31. The Commission does not have jurisdiction to rule on this claim.

32. Accordingly, this portion of the Formal Complaint must be dismissed.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections, and dismiss the portions of the Formal Complaint that: a) seeks to opt out of Duquesne Light Company's smart meter program; and b) alleges that Duquesne Light Company has violated the Fourth Amendment to the United States Constitution.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read "Paul Shane Miller", is written over a horizontal line.

Paul Shane Miller, Esquire

PA I.D. No. 319174

(412) 594-5503

Jeremy V. Farrell, Esquire

PA I.D. No. 316258

(412) 594-3938

1500 One PPG Place
Pittsburgh, PA 15222
Counsel for Respondent,
Duquesne Light Company

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Miranda Grace Edwards
3835 Acorn Street
Pittsburgh, PA 15207

Dated this 5th day of July, 2018



Paul Shane Miller, Esquire
PA I.D. No. 319174
smiller@tuckerlaw.com

Jeremy V. Farrell, Esquire
PA I.D. No. 316258
(412) 594-3938
jfarrell@tuckerlaw.com

1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5619 (fax)
Counsel for Respondent,
Duquesne Light Company